

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
East Tennessee Radio Group, L.P.)	File Number EB-02-AT-231
)	
Owner of Antenna Structure Registration No. 1063413 in Sevierville, Tennessee)	NAL/Acct. No. 200232480010
)	
Dalton, Georgia)	FRN 0005-0880-67

FORFEITURE ORDER

Adopted: March 24, 2003

Released: March 26, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of two thousand four hundred dollars (\$2,400) to East Tennessee Radio Group L.P. (“East Tennessee”), owner of an antenna structure with Antenna Structure Registration (“ASR”) number 1063413 in Sevierville, Tennessee, for willfully violating Section 17.57 of the Commission’s Rules (“Rules”).¹ The noted violation involves East Tennessee’s failure to notify the Commission immediately of a change in ownership of the antenna structure.

2. On June 27, 2002, the FCC Enforcement Bureau’s Atlanta, Georgia Field Office (“Atlanta Office”) issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of five thousand dollars (\$5,000) to East Tennessee.² East Tennessee filed a response on August 16, 2002.

II. BACKGROUND

3. On May 15, 2002, an agent from the Atlanta Office inspected the antenna structure of WSEV(AM) in Sevierville, Tennessee.³ The agent was unable to locate an ASR number posted on or near the tower, its fence, building, gate, or anywhere on the property.

4. On May 15, 2002, the agent inspected WSEV(AM) at its studio in Sevierville, Tennessee. After advising East Tennessee of its failure to post the ASR number, the agent conducted an interview with the station’s chief engineer, who stated that the ASR posting had recently been vandalized and had not yet been reposted. FCC records indicated that the owner of the antenna structure was Dollywood Broadcasting; however, East Tennessee advised the agent that it was the owner of the antenna structure and that Dollywood Broadcasting was the previous owner.

¹ 47 C.F.R. § 17.57.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct.No. 200232480010 (Enf. Bur., Atlanta Office, rel. June 27, 2002).

³ East Tennessee is the licensee of radio station WSEV(AM) as well as owner of the antenna structure.

5. On June 27, 2002 the Atlanta Office issued an *NAL* for a \$5,000 forfeiture to East Tennessee for failure to post its ASR number on or near the base of its antenna structure in willful violation of Section 17.4(g) of the Rules⁴ and failure to notify the Commission immediately of a change in ownership of the antenna structure in willful violation of Section 17.57 of the Rules. In its response to the *NAL*, East Tennessee argues that the \$2,000 forfeiture proposed for the Section 17.4(g) violation should be set aside because it took action to replace the missing ASR sign prior to the inspection of the antenna structure by the FCC agent. East Tennessee asserts that it has suffered recurring vandalism at its transmitter site and has replaced its ASR sign three times during the past eight months. East Tennessee provides a sworn declaration from its contract engineer, who states that he noticed the sign was missing about a week prior to the FCC inspection, promptly ordered a replacement sign, and was preparing to post the new sign when the FCC agent discovered the violation. The engineer further states that he posted the new sign immediately following the inspection. East Tennessee also seeks cancellation of the \$3,000 forfeiture proposed for failure to notify the Commission of the change in ownership of the antenna structure. East Tennessee states that it consummated the assignment of license for WSEV(AM) from Dollywood Broadcasting on May 10, 2000, and notified the FCC the next day that the assignment had been consummated. East Tennessee asserts that it believed in good faith that this notification adequately alerted the FCC to the change in ownership of the antenna structure. In addition, East Tennessee asserts that when informed of the Commission's outdated records of the antenna structure's ownership, it promptly took steps to remedy the violation. Finally, East Tennessee submits that its overall history of compliance with the Commission's rules warrants reduction of the forfeiture amount.

III. DISCUSSION

6. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁵ Section 1.80 of the Commission's Rules,⁶ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999). In examining East Tennessee's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷

7. Section 17.4(g) of the Rules requires that the ASR number be displayed in a conspicuous place so that it is readily visible near the base of the antenna structure. On the date of the inspection, East Tennessee did not have its ASR number posted. However, East Tennessee provides a sworn declaration from its contract engineer, who states that he noticed the sign was missing about a week prior to the FCC inspection, promptly ordered a replacement sign, and was preparing to post the new sign when the FCC agent discovered the violation. Although the Commission has repeatedly stated that remedial actions taken to correct a violation are not mitigating factors warranting reduction of a forfeiture,⁸ the record reflects that East Tennessee promptly took action to replace the missing sign prior to the FCC inspection. Thus, its corrective action stemmed from its own voluntary and timely efforts, not just a hasty attempt to

⁴ 47 C.F.R. § 17.4(g).

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ See e.g., *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002); *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994); *Station KGVL, Inc.*, 42 FCC 2d 258, 259 (1973).

comply due to the FCC inspection.⁹ Under these circumstances, we conclude that cancellation of the \$2,000 forfeiture for this violation is warranted.

8. Section 17.57 of the Rules requires an antenna structure owner to notify the Commission immediately of any change in ownership information for an antenna structure using FCC Form 854. At the time of the inspection, Commission records reflected that Dollywood Broadcasting was the owner of East Tennessee's Sevierville, Tennessee antenna structure. East Tennessee argues that the forfeiture for violating Section 17.57 should be set aside because it believed in good faith that its filing of a notification of consummation of the assignment of license for WSEV(AM) was adequate to notify the Commission of the change in ownership of the antenna structure. We disagree. Section 17.57 clearly requires that owners notify the Commission of a change in ownership of an antenna structure using FCC Form 854. Licensees are expected to know and comply with the Commission's rules.¹⁰ East Tennessee provides no evidence that it took steps to ensure that it was in compliance with the requirements of Section 17.57. Furthermore, while East Tennessee asserts that it promptly took steps to remedy the violation after the FCC inspection, as noted above, remedial actions taken to correct a violation are not mitigating factors justifying reduction of a forfeiture. Accordingly, we conclude that East Tennessee willfully¹¹ violated Section 17.57 of the Rules and that cancellation of the \$3,000 forfeiture for this violation is not warranted. However, after considering East Tennessee's past history of compliance, we reduce the forfeiture amount from \$3,000 to \$2,400.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311, and 1.80(f)(4) of the Rules,¹² East Tennessee **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$2,400 for willfully violating Section 17.57 of the Rules.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules, within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹³ Payment may be made by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 200232480010 and FRN 0005-0880-67. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁴

⁹ See *Motorola, Inc.*, 12 FCC Rcd 15268 (1997).

¹⁰ *Sitka Broadcasting Company, Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Company*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Company*, 23 FCC 2d 868 (1970).

¹¹ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹² 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹³ 47 U.S.C. § 504(a).

¹⁴ See 47 C.F.R. § 1.1914.

11. **IT IS FURTHER ORDERED** that copies of this *Order* shall be sent by first class mail and certified mail return receipt requested to East Tennessee Radio Group, L.P., P.O. Box 1284 Dalton, GA 37862, and to its counsel, Brian M. Madden, Esq., Leventhal, Senter, & Lerman, P.L.L.C., Suite 600, 2000 K Street N.W., Washington, D.C. 20006-1809.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau